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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

DUSTIN OWEN REDENIUS,	Case No. 3:14-cv-00538-RCJ-VPC
 Petitioner,	 ORDER
v.	
JACK PALMER, <i>et al.</i> ,	
 Respondents.	

Before the court for a decision on the merits is an application for a writ of habeas corpus filed by Dustin Owen Redenius. ECF No. 16.

I. BACKGROUND¹

On April 19, 2007, a jury in the Second Judicial District Court of the State of Nevada in and for the County of Washoe found Redenius not guilty of sexual assault on a child (Count I), but guilty of lewdness with a child under the age of fourteen years (Count II). At trial, it was not disputed that, in the early morning hours of August 9, 2005, Redenius, Redenius's girlfriend, Desha P., and Desha P.'s twelve-year old daughter (S.P) were in bed together. Redenius later told the police that he was only in the bed for about ten minutes, then left because it was too small for three people. S.P. told the police that Redenius caressed her breasts and vaginal area, and subsequently inserted his penis in her vagina before leaving the room.

¹ This procedural background is derived from the exhibits located at ECF Nos. 17-24 and 36-40 and from this court's own docket entries.

1 The court sentenced Redenius to a term of life imprisonment in the Nevada State
2 Prison with a minimum parole eligibility after ten years. Redenius appealed. On
3 February 26, 2009, the Nevada Supreme Court affirmed the judgment of conviction.

4 On March 9, 2010, Redenius filed his pro se petition for writ of habeas corpus in
5 state district court. With assistance of counsel, he filed a supplemental petition, which
6 the state district court denied. Redenius appealed.

7 On March 27, 2014, the Nevada Supreme Court affirmed the state district court's
8 order denying relief. The Nevada Supreme Court subsequently denied Redenius's
9 petition for rehearing. He then moved for en banc reconsideration which the Nevada
10 Supreme Court denied on September 24, 2014.

11 On October 14, 2014, Redenius mailed his petition for writ of habeas corpus
12 pursuant to 28 U.S.C. § 2254 to this court. On October 2, 2015, having been appointed
13 counsel, Redenius filed his first amended petition for writ of habeas corpus.
14 Respondents filed a motion to dismiss in response to the petition, which this court
15 denied.

16 II. STANDARDS OF REVIEW

17 This action is governed by the Antiterrorism and Effective Death Penalty Act
18 (AEDPA). 28 U.S.C. § 2254(d) sets forth the standard of review under AEDPA:

19 An application for a writ of habeas corpus on behalf of a person in
20 custody pursuant to the judgment of a State court shall not be granted with
21 respect to any claim that was adjudicated on the merits in State court
proceedings unless the adjudication of the claim –

22 (1) resulted in a decision that was contrary to, or involved an
unreasonable application of, clearly established Federal law, as
23 determined by the Supreme Court of the United States; or

24 (2) resulted in a decision that was based on an
unreasonable determination of the facts in light of the evidence
25 presented in the State court proceeding.

26 A decision of a state court is "contrary to" clearly established federal law if the
27 state court arrives at a conclusion opposite that reached by the Supreme Court on a
28 question of law or if the state court decides a case differently than the Supreme Court

1 has on a set of materially indistinguishable facts. *Williams v. Taylor*, 529 U.S. 362, 405-
2 06 (2000). An "unreasonable application" occurs when "a state-court decision
3 unreasonably applies the law of [the Supreme Court] to the facts of a prisoner's case."
4 *Id.* at 409. "[A] federal habeas court may not "issue the writ simply because that court
5 concludes in its independent judgment that the relevant state-court decision applied
6 clearly established federal law erroneously or incorrectly." *Id.* at 411.

7 The Supreme Court has explained that "[a] federal court's collateral review of a
8 state-court decision must be consistent with the respect due state courts in our federal
9 system." *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003). The "AEDPA thus imposes a
10 'highly deferential standard for evaluating state-court rulings,' and 'demands that state-
11 court decisions be given the benefit of the doubt.'" *Renico v. Lett*, 559 U.S. 766, 773
12 (2010) (quoting *Lindh v. Murphy*, 521 U.S. 320, 333, n. 7 (1997); *Woodford v. Viscotti*,
13 537 U.S. 19, 24 (2002) (per curiam)). "A state court's determination that a claim lacks
14 merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on
15 the correctness of the state court's decision." *Harrington v. Richter*, 562 U.S. 86, 101
16 (2011) (citing *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). The Supreme Court
17 has emphasized "that even a strong case for relief does not mean the state court's
18 contrary conclusion was unreasonable." *Id.* (citing *Lockyer v. Andrade*, 538 U.S. 63, 75
19 (2003)); see also *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (describing the AEDPA
20 standard as "a difficult to meet and highly deferential standard for evaluating state-court
21 rulings, which demands that state-court decisions be given the benefit of the doubt")
22 (internal quotation marks and citations omitted).

23 "[A] federal court may not second-guess a state court's fact-finding process
24 unless, after review of the state-court record, it determines that the state court was not
25 merely wrong, but actually unreasonable." *Taylor v. Maddox*, 366 F.3d 992, 999 (9th
26 Cir. 2004); see also *Miller-El*, 537 U.S. at 340 ("[A] decision adjudicated on the merits in
27 a state court and based on a factual determination will not be overturned on factual
28

1 grounds unless objectively unreasonable in light of the evidence presented in the state-
2 court proceeding, § 2254(d)(2).").

3 Because de novo review is more favorable to the petitioner, federal courts can
4 deny writs of habeas corpus under § 2254 by engaging in de novo review rather than
5 applying the deferential AEDPA standard. *Berghuis v. Thompkins*, 560 U.S. 370, 390
6 (2010).

7 III. DISCUSSION

8 **Ground One**

9 In Ground One, Redenius claims his conviction and sentence are in violation of
10 his constitutional right to due process because the State presented insufficient evidence
11 to prove beyond a reasonable doubt that he was guilty of the lewdness charge.

12 Redenius contends that the jury's guilty verdict on the lewdness charge was internally
13 inconsistent with its not guilty verdict on the sexual assault charge. According to
14 Redenius, the lewdness allegation was "part and parcel" of the sexual assault
15 allegation, so if the jury disbelieved S.P.'s allegation regarding the latter it necessarily
16 requires a finding of insufficient evidence as to the former.

17 Redenius presented his sufficiency of evidence claim to the Nevada Supreme
18 Court in his direct appeal. ECF No. 9-1, p. 11-13. The court addressed the claim as
19 follows:

20 Redenius argues that there was insufficient evidence for the jury to
21 find him guilty of lewdness with a minor under the age of fourteen when
22 the jury acquitted him of sexual assault that was alleged to have occurred
23 right after the conduct supporting the lewdness conviction. Redenius
24 contends that pursuant to our holding in *Crowley v. State*, 120 Nev. 30, 83
25 P.3d 282 (2004), since the jury found that the State failed to meet its
26 burden on the sexual assault charge, and the lewdness was a prelude to
27 the sexual assault, there was insufficient evidence for the jury to find that
28 he committed a lewd act with the victim. Redenius further contends that
for a jury to convict on a charge of lewdness and acquit on a charge of
sexual assault leads to a verdict, which is inconsistent with the facts of the
case.

This court will not reverse a jury's verdict on appeal if that verdict is
supported by substantial evidence. *Moore v. State*, 122 Nev. 27, 35, 126
P.3d 508, 513 (2006). "There is sufficient evidence if the evidence, viewed
in the light most favorable to the prosecution, would allow any rational trier

1 of fact to find the essential elements of the crime beyond a reasonable
2 doubt.” *Leonard v. State*, 114 Nev. 1196, 1209–10, 969 P.2d 288, 297
3 (1998). In *Crowley*, 120 Nev. at 34, 83 P.3d at 285–86, we overturned a
4 lewdness conviction when the defendant was also convicted of sexual
assault for the same act on which the lewdness conviction was based. We
determined that Crowley’s act of rubbing the young male victim’s penis
was a prelude to the sexual assault and not a separate lewd act since
Crowley never stopped his actions. *Id.* at 34, 83 P.3d at 285.

5 Our review of the record reveals sufficient evidence to establish
6 guilt beyond a reasonable doubt as determined by a rational trier of fact.
The victim testified that Redenius first touched her breasts, stomach and
7 vagina.

8 She further testified that Redenius stopped touching her for a short
9 period of time, which led her to believe that the incident was over, before
Redenius allegedly had sexual intercourse with her. Redenius did stop,
even if it was for a very brief period, in between his lewd touching of the
10 victim and the alleged sexual assault. Further, Redenius’ reading of our
decision in *Crowley* is faulty and inconsistent with our actual holding. In
11 *Crowley*, we held that a defendant may not be convicted of both lewdness
and sexual assault when the conduct supporting the lewdness conviction
was a mere prelude to a sexual assault that occurs immediately thereafter.
12 *Id.* at 34, 83 P.3d at 285–86. We did not hold that an acquittal on a charge
of sexual assault immediately after lewd conduct necessitated an acquittal
13 for lewdness.

14 Moreover, Redenius’ case is distinguishable from *Crowley*. *Id.* at
31–32, 83 P.3d at 284. In *Crowley*, there was no interruption between
15 Crowley’s lewd act of touching the young male victim’s penis and the
sexual assault which followed. *Id.* at 34, 83 P.3d at 285. Whereas in the
16 instant case, there was an interruption between the lewd act and the
alleged sexual assault. Therefore, we conclude that no relief is warranted
17 on this claim.

18 ECF No. 9-4, p. 2-4.

19 The Nevada Supreme Court correctly identified the “rational factfinder” standard
20 established in *Jackson v. Virginia*, 443 U.S. 307, 319 (1979), as the federal law
21 standard to test whether sufficient evidence supports a state conviction. See *Mikes v.*
22 *Borg*, 947 F.2d 353, 356 (9th Cir. 1991). Under that standard, the court inquires as to
23 “whether, after viewing the evidence in the light most favorable to the prosecution, any
24 rational trier of fact could have found the essential elements of the crime beyond a
reasonable doubt.” *Jackson*, 443 U.S. at 319 (citation omitted). And because this court
25 must review the Nevada Supreme Court’s sufficiency of evidence determination under
26 AEDPA, “there is a double dose of deference that can rarely be surmounted.” *Boyer v.*
27 *Belleque*, 659 F.3d 957, 964 (9th Cir. 2011). That means that even if this court “think[s]
28

1 the state court made a mistake,” the petitioner is not entitled to habeas relief unless the
2 state court's application of the *Jackson* standard was “objectively unreasonable.” *Id.*

3 This court sees no internal inconsistency with respect to the jury’s verdicts on the
4 two charges. Had the jury found him not guilty of lewdness, but guilty of sexual assault,
5 Redenius’s argument would be somewhat more convincing. But, because the sexual
6 assault charge required proof of elements not part of the lewdness charge – most
7 notably sexual penetration and lack of consent – the jury’s not guilty verdict on the
8 former did not conflict with its guilty verdict on the latter. *Cf.* Nev. Rev. Stat. § 200.366
9 (2003),² with Nev. Rev. Stat. § 201.230 (2003). Moreover, the jury was entitled to give
10 credence to portions of a S.P.’s testimony while discrediting other portions.

11 The evidence presented a trial is sufficient for this court to conclude that the
12 Nevada Supreme Court’s decision to deny relief was not “objectively unreasonable”
13 under the *Jackson* standard.

14 Ground One is denied.

15 **Ground Two**

16 In Ground Two, Redenius claims that language used in the trial court’s
17 reasonable doubt instruction allowed for a conviction based on a quantum of jury belief
18 below the reasonable doubt standard established by the U.S. Supreme Court. The
19 reasonable doubt instruction at Redenius’s trial read as follows:

20 A reasonable doubt is one based on reason. It is not mere possible
21 doubt, but is such a doubt as would govern or control a person in the more
22 weighty affairs of life. If the minds of the jurors, after the entire comparison
23 and consideration of all the evidence, are in such a condition that they can
say they feel an abiding conviction of the truth of the charge, there is not a
reasonable doubt. Doubt to be reasonable must be actual, not mere
possibility or speculation.

24 ECF No. 20, p. 9.

25 On direct appeal, the Nevada Supreme Court rejected Redenius’s argument that
26 the instruction violated his constitutional rights:

27 ² **Error! Main Document Only.**In 2015, the statute was amended to provide that sexual penetration of a child under
28 the age of 14 years is statutory sexual assault. See Nev. Rev. Stat. 200.366(1)(b).

1 Redenius argues that the caselaw of this and other jurisdictions
2 does not support the “more weighty affairs of life” instruction for
3 reasonable doubt currently encompassed in NRS 175.211(1). Redenius
4 argues that this court should hold that the reasonable doubt instruction of
NRS 175.211(1) is unconstitutional. This court reviews a district court's
decision regarding jury instructions for an abuse of discretion. *Rose v.*
State, 123 Nev. 24, —, 163 P.3d 408, 415 (2007).

5 We conclude that Redenius' argument concerning the
6 constitutionality of the reasonable doubt instruction as codified at NRS
7 175.211(1) and given by the district court in this case is entirely without
8 merit. “This court has repeatedly reaffirmed the constitutionality of
9 Nevada's reasonable doubt instruction.” *Buchanan v. State*, 119 Nev. 201,
221, 69 P.3d 694, 708 (2003). The Ninth Circuit Court of Appeals has also
upheld this state's reasonable doubt instruction. *Ramirez v. Hatcher*, 136
F.3d 1209, 1215 (9th Cir.1998). Thus, the district court did not abuse its
discretion in giving the reasonable doubt instruction codified by NRS
175.211(1).

10
11 ECF No. 9-4, p. 6 (footnote omitted).

12 The constitutionality of the reasonable doubt jury instruction depends on
13 “whether there is a reasonable likelihood that the jury understood the instructions to
14 allow conviction based on proof insufficient to meet’ the requirements of due process.”
15 *Ramirez*, 136 F.3d at 1211 (quoting *Victor v. Nebraska*, 511 U.S. 1, 6 (1994)). The jury
16 instruction on reasonable doubt used at Redenius’s trial was the same instruction
17 challenged in *Ramirez*, which the court of appeals criticized but nonetheless upheld as
18 constitutional. *Ramirez*, 136 F.3d at 1214-15; see, also, *Nevius v. McDaniel*, 218 F.3d
19 940, 944-45 (9th Cir. 2000). As such, the law of this circuit forecloses habeas relief
20 based on this jury instruction.

21 Ground Two is denied.

22 **Ground Three**

23 Ground Three consists of claims that Redenius was deprived of effective
24 assistance of counsel, in violation of his rights under the Sixth and Fourteenth
25 Amendments. To establish a claim of ineffective assistance of counsel (IAC) under
26 *Strickland*, a petitioner must show that (1) “counsel made errors so serious that counsel
27 was not functioning as the 'counsel' guaranteed the defendant by the Sixth
28 Amendment,” and (2) counsel's errors “deprive[d] the defendant of a fair trial, a trial

1 whose result is reliable.” *Id.* at 687. Under the first *Strickland* prong, whether an
2 attorney's performance was deficient is judged against an objective standard of
3 reasonableness. *Id.* at 687-88. Under the second prong, a petitioner must “show that
4 there is a reasonable probability that, but for counsel's unprofessional errors, the result
5 of the proceeding would have been different.” *Id.* at 694.

6 *Ground Three(B)*

7 In Ground Three(B), Redenius alleges that his counsel was ineffective by failing
8 to object to the introduction of a redacted videotape of S.P.’s statement into jury
9 deliberations. The videotaped statement was not played in open court, but was admitted
10 as evidence. Citing to *United States v. Noushfar*, 78 F.3d 1442 (9th Cir. 1996), Redenius
11 argues that allowing the videotape into the jury room without having it played in open
12 court was structural error. In Ground Four, Redenius claims that his appellate counsel
13 was ineffective for not raising the issue on direct appeal.

14 Having cited to the *Strickland* standard, the Nevada Supreme Court addressed
15 the issue as follows in Redenius’s post-conviction proceeding:

16 [A]ppellant argues that trial counsel was ineffective for failing to
17 object to the jury's having had access to the victim's videotaped statement
18 to the police where the video was not played in open court. Appellant also
19 contends that appellate counsel was ineffective for failing to argue on
20 direct appeal that the submission of the unplayed videotape to the jury
21 during deliberations was structural error requiring an automatic reversal of
22 the conviction and a new trial. Appellant failed to demonstrate prejudice.
The videotape was inaudible and the jury was presented with a transcript
of the victim's statement. Appellant has neither presented any evidence
that jurors in fact viewed the videotape¹ nor identified anything in the
videotape that the jurors should not have seen and thus failed to
demonstrate a reasonable probability of a different outcome at trial.

23 Furthermore, appellant's reliance on *United States v. Noushfar*, 78
24 F.3d 1442, 1445 (9th Cir.1996) (holding that it was structural error to allow
the jury to take into deliberations tapes that had not been played in the
courtroom because the evidence had not been “presented and tested in
front of the jury, judge and defendant”), *as amended*, 140 F.3d 1244 (9th
25 Cir.1998), is unavailing, because two years later, the court decided
Eslaminia v. White, in which it essentially limited the holding in *Noushfar* to
26 its facts -- the jury was given access to 14 tapes of conversations in which
the defendants incriminated themselves, 136 F.3d 1234, 1237 n.1 (9th
27 Cir.1998). The *Eslaminia* court instead examined for harmless error the
jury's consideration of an unadmitted recording of a conversation by the
28 defendant's brother, who did not testify at trial, that “seriously impact[ed]”

1 the defendant's credibility but did not directly incriminate him,² *Id.* at 1237
2 & n.1. In light of the lack of a directly on-point case by the United States
3 Supreme Court or even the Ninth Circuit Court of Appeals, appellant failed
4 to demonstrate a reasonable probability of a different outcome on appeal
5 had appellate counsel raised the issue on direct appeal. We therefore
6 conclude that the district court did not err in denying these claims.

7 ¹ Appellant refers to a comment by the jury foreperson, which he
8 characterizes as “discussing” the video. However, the comment was made in the
9 context of requesting a transcript of appellant's statement to the police and
10 merely acknowledged to the trial court that the jury had the video of appellant's
11 interview and a transcript of the victim's statement.

12 ² In contrast, the parties agree that the videotape at issue here was
13 admitted into evidence.

14 ECF No. 40-23, p. 5-6.

15 This court agrees that *Noushfar* is not controlling and easily distinguishable from
16 this case. As noted in *Eslaminia*, the structural error holding in *Noushfar* was premised
17 on the conclusion that “[t]he quantity of the extrinsic evidence and its incriminating
18 character made it impossible for the reviewing court to determine the impact on jurors.”
19 *Eslaminia*, 136 F.3d at 1237. The single, barely audible, videotape of a witness who
20 testified a Redenius’s trial does not raise similar concerns.

21 Moreover, the court in *Noushfar* was not considering the error within the context of
22 an ineffective assistance of counsel claim. See *Noushfar*, 78 F.3d at 1444–45. It has not
23 been conclusively decided in the Ninth Circuit that *Strickland* prejudice can be presumed
24 where counsel's deficient performance results in a structural error. See *United States v.*
25 *Withers*, 638 F.3d 1055, 1067 (9th Cir. 2011) (holding that such a claim is not frivolous,
26 but not resolving the issue and noting a split of authority). In the absence of a clear holding
27 from the Supreme Court on the issue, this court must defer to the Nevada Supreme
28 Court’s decision. See *Carey v. Musladin*, 549 U.S. 70, 77 (2006) (“Given the lack of
holdings from this Court regarding the [issue presented] here, it cannot be said that the
state court unreasonabl[y] appli[ed] clearly established Federal law.”).

Redenius has made no showing that he suffered *Strickland*-level prejudice by the
presence of the redacted videotape in the jury room. Indeed, he does not meaningfully
dispute the Nevada Supreme Court’s findings that the videotape was “inaudible” and

1 that there is no evidence the jurors actually watched the tape. And, as noted, a written
2 transcript of the statement was also available to the jury. Thus, Redenius has not
3 established the Nevada Supreme Court's application of *Strickland* to his trial and
4 appellate IAC claims was unreasonable. See *Richter*, 562 U.S. at 101.

5 Grounds Three(B) and Four are denied.

6 *Ground Three(C)*

7 In Ground Three(C), Redenius alleges that trial counsel was ineffective in her
8 use at trial of the transcript of S.P.'s statement. He contends that, by using the
9 statement to cross-examine S.P., counsel opened the door for the prosecution to have
10 the redacted statement and videotape admitted into evidence. According to Redenius,
11 the prejudicial effect of having the statement admitted outweighed any benefit gained by
12 its use as a cross-examination tool.

13 Because the Nevada Supreme Court did not address the claim on the merits (ECF
14 No. 40-23, p. 3), this court reviews the claim de novo. Under such review, the claim fails
15 to satisfy either prong of the *Strickland* standard. Even if counsel's use of the transcript
16 was not particularly effective, Redenius has not shown that counsel's efforts in this regard
17 fell below an objective standard of reasonableness. With respect to prejudice, Redenius
18 makes only a broad claim that "the information trial counsel sought during cross-
19 examination did not outweigh the prejudicial effect of the introduction of the redacted
20 statement." ECF No. 16, p. 27. He does not, however, establish that, absent the
21 introduction of the statement, there is a reasonable probability that the outcome of his trial
22 would have been different.

23 Ground Three(C) is denied.

24 *Ground Three(D)*

25 In Ground Three(D), Redenius claims that counsel was ineffective in failing to
26 object to the prosecutor referring to S.P. as a "little girl." He notes that, even though his
27 trial had to be postponed due to S.P.'s pregnancy from a relationship in Hawaii, the
28 prosecutor successfully moved the trial court to preclude any mention of S.P.'s sexual

1 history and pregnancy. He argues that the prosecutor improperly exploited the
2 evidentiary ruling by repeatedly referring to S.P. as a “little girl” or “child” in her closing
3 argument.

4 Having cited to the *Strickland* standard, the Nevada Supreme Court addressed
5 the issue as follows in Redenius’s post-conviction proceeding:

6 [A]ppellant argues that trial counsel was ineffective for failing to
7 object to the prosecutor’s repeated references to the victim as a “little girl.”
8 Appellant failed to demonstrate deficiency or prejudice. Appellant
9 identified no basis on which counsel could have successfully objected
10 where the references to the victim’s age were factually accurate and all
11 but two of the identified references were made in closing argument. See
12 *State v. Green*, 81 Nev. 173, 176, 400 P.2d 766, 767 (1965) (“The
13 prosecutor had a right to comment upon the testimony and to ask the jury
14 to draw inferences from the evidence, and has the right to state fully his
15 views as to what the evidence shows.”). We therefore conclude that the
16 district court did not err in denying this claim.

17 ECF No. 40-23, p. 4.

18 “Because many lawyers refrain from objecting during opening statement and
19 closing argument, absent egregious misstatements, the failure to object during the
20 closing argument and opening statement is within the ‘wide range’ of permissible
21 professional conduct.” *United States v. Necoechea*, 986 F.2d 1273, 1281 (9th Cir. 1993)
22 (citing *Strickland*, 466 U.S. at 689). The record does not indicate that the prosecutor’s
23 description of S.P. was inaccurate, much less egregious. In addition, defense counsel
24 effectively argued in her closing remarks that S.P. was not an innocent and defenseless
25 victim. ECF No. 19-2, p. 57-69. Moreover, the jurors had ample opportunity to observe
26 S.P. when she testified at trial and, for more likely than not, formed their own impression
27 of her, rather than relying upon the prosecutor’s descriptions.

28 Under the circumstances, the Nevada Supreme Court’s application of the
Strickland standard was not unreasonable. Ground Three(D) is denied.

Ground Three(E)

In Ground Three(E), Redenius alleges that the cumulative effect of counsel’s
errors warrants habeas relief. The Nevada Supreme Court rejected this claim, stating
“[b]ecause appellant failed to demonstrate error, he necessarily failed to demonstrate

1 cumulative error.” ECF No. 40-23, p. 6. Redenius has not shown that the Nevada
2 Supreme Court’s determination was based on an unreasonable application of the law or
3 an unreasonable determination of the facts. Thus, Ground Three(E) is denied.

4 In summary, none of Redenius’s IAC claims provide grounds for granting habeas
5 relief in this case.

6 IV. CONCLUSION

7 For the reasons set forth above, Redenius is not entitled to habeas relief.

8 *Certificate of Appealability*

9 Because this is a final order adverse to the petitioner, Rule 11 of the Rules
10 Governing Section 2254 Cases requires this court to issue or deny a certificate of
11 appealability (COA). Accordingly, the court has *sua sponte* evaluated the claims within
12 the petition for suitability for the issuance of a COA. See 28 U.S.C. § 2253(c); *Turner v.*
13 *Calderon*, 281 F.3d 851, 864-65 (9th Cir. 2002).

14 Pursuant to 28 U.S.C. § 2253(c)(2), a COA may issue only when the petitioner
15 "has made a substantial showing of the denial of a constitutional right." With respect to
16 claims rejected on the merits, a petitioner "must demonstrate that reasonable jurists
17 would find the district court's assessment of the constitutional claims debatable or
18 wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v. Estelle*, 463
19 U.S. 880, 893 & n.4 (1983)). For procedural rulings, a COA will issue only if reasonable
20 jurists could debate (1) whether the petition states a valid claim of the denial of a
21 constitutional right and (2) whether the court's procedural ruling was correct. *Id.*

22 Having reviewed its determinations and rulings in adjudicating Redenius’s petition,
23 the court declines to issue a certificate of appealability for its resolution of any procedural
24 issues or any of Redenius’s habeas claims.

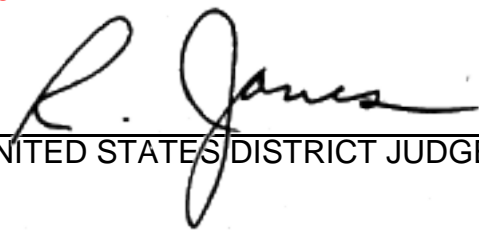
25 **IT IS THEREFORE ORDERED** that petitioner's amended petition for writ of
26 habeas corpus (ECF No. 16) is DENIED. The Clerk shall enter judgment accordingly.

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IT IS FURTHER ORDERED that a certificate of appealability is DENIED.
DATED THIS .25th day of September, 2018.


UNITED STATES DISTRICT JUDGE